

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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PEDRO RODRIGUEZ.

Petitioner,

Case No. 3:23-cv-00031-MMD-CLB

v.

WILLIAM GITTERE, *et al.*,

Respondents.

SCHEDULING ORDER

This action is Pedro Rodriguez's petition for a writ of habeas corpus under 28 U.S.C. § 2254. Rodriguez is an individual incarcerated at Nevada's Ely State Prison and sentenced to death. The Court has granted Rodriguez's motion for appointment of counsel and has appointed counsel to represent him. (See ECF Nos. 3, 9.) Appointed counsel has appeared for Rodriguez, and Respondents have also appeared. (See ECF Nos. 5, 6, 7, 8, 9.) Therefore, the Court will now set a schedule for further proceedings in this action. The Court will also direct the Clerk of the Court to update the docket for this case to correctly reflect the identity of the respondent warden.

It is therefore ordered that the following schedule will govern further proceedings in this case.

1. Amended Petition. If necessary, Petitioner must file an amended petition for writ of habeas corpus within 180 days after the entry of this order. The amended petition must specifically state whether each ground for relief has been exhausted in state court; for each claim that has been exhausted in state court, the amended petition must state how, when, and where that occurred. If Petitioner determines that an amended petition need not be filed, then, within the time for the filing of an amended petition, Petitioner must file a statement to that effect.

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1 2. Response to Petition. Respondents will have 90 days following the filing of
2 an amended petition to file an answer or other response to the amended petition. If
3 Petitioner does not file an amended petition, Respondents will have 90 days following the
4 due date for the amended petition to file an answer or other response to the original
5 petition.

6 3. Reply and Response to Reply. Petitioner will have 60 days following the
7 filing of an answer to file a reply. Respondents will thereafter have 45 days following the
8 filing of a reply to file a response to the reply.

9 4. Briefing of Motion to Dismiss. If Respondents file a motion to dismiss,
10 Petitioner will have 60 days following the filing of the motion to file a response to the
11 motion. Respondents will thereafter have 45 days following the filing of the response to
12 file a reply.

13 5. Discovery. If Petitioner wishes to move for leave to conduct discovery,
14 Petitioner must file such motion concurrently with, but separate from, the response to
15 Respondents' motion to dismiss or the reply to Respondents' answer. Any motion for
16 leave to conduct discovery filed by Petitioner before that time may be considered
17 premature and may be denied without prejudice on that basis. Respondents must file a
18 response to any such motion concurrently with, but separate from, their reply in support
19 of their motion to dismiss or their response to Petitioner's reply. Thereafter, Petitioner will
20 have 20 days to file a reply in support of the motion for leave to conduct discovery.

21 6. Evidentiary Hearing. If Petitioner wishes to request an evidentiary hearing,
22 Petitioner must file a motion for an evidentiary hearing concurrently with, but separate
23 from, the response to Respondents' motion to dismiss or the reply to Respondents'
24 answer. Any motion for an evidentiary hearing filed by Petitioner before that time may be
25 considered premature and may be denied without prejudice on that basis. The motion for
26 an evidentiary hearing must specifically address why an evidentiary hearing is required
27 and must meet the requirements of 28 U.S.C. § 2254(e). The motion must state whether
28 an evidentiary hearing was held in state court, and, if so, state where the transcript is

1 located in the record. If Petitioner files a motion for an evidentiary hearing, Respondents
2 must file a response to that motion concurrently with, but separate from, their reply in
3 support of their motion to dismiss or their response to Petitioner's reply. Thereafter,
4 Petitioner will have 20 days to file a reply in support of the motion for an evidentiary
5 hearing.

6 It is further ordered that, pursuant to Federal Rule of Civil Procedure 25(d), William
7 Gittere is substituted for William Reubart as the respondent warden. The Clerk of the
8 Court is directed to update the docket for this case to reflect this change.

9 DATED THIS 14th Day of February 2023.

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12 MIRANDA M. DU
13 CHIEF UNITED STATES DISTRICT JUDGE
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